

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10089 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NAZIR HUSSAIN ABDUL MAJID SHAIKH

Versus

DISTRICT MAGISTRATE

Appearance:

MR JK PARMAR for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

The petitioner challenges the order of preventive
detention dated 15th September, 1998, made by the
District Magistrate, Bharuch, under the powers conferred
upon him under sub-section (1) of section 3 of the

Gujarat Prevention of Anti Social Activities Act, 1985
(hereinafter referred to as 'the Act').

It is alleged that the petitioner is a habitual offender and committing offences punishable under Chapters XVI and XVII of the IPC. He keeps lethal weapons, threatens the people and extorts money. An offence being CR No. 127/98 has been registered against the petitioner in Bharuch City Police Station. In the said offence, a knife was recovered from the petitioner and he has been released on bail. The police has also examined three witnesses, whose identity and other particulars have been withheld. The said three witnesses have given statements in respect of three incidents in respect of the petitioner's anti-social activities. It is also stated that on account of such activities, the public tranquility is disturbed. It is also mentioned that for similar activities, the petitioner had been externed by the Commissioner of Police, Vadodara, from the limits of Vadodara City, Vadodara (Rural) and Kheda District. The petitioner is, therefore, held to be a 'dangerous person' whose activities are prejudicial to the maintenance of public order. The Detaining Authority has also referred to certain Chapter cases, wherein the petitioner has been ordered to furnish bond of good conduct. The Detaining Authority has also recorded his personal satisfaction in respect of the genuineness of the statements given by the witnesses and the need to withhold their names.

The impugned order of detention has been challenged on the grounds (a) for a singular offence registered against the petitioner, the petitioner can not be said to be a habitual offender, and consequently, a 'dangerous person' within the meaning of section 2 (c) of the Act; (b) the Detaining Authority has failed to record his subjective satisfaction in respect of the fear of retaliation expressed by the witnesses and of need to withhold their identity and other particulars. Therefore, the privilege claimed under section 9 (2) of the Act is unwarranted; (c) the Detaining Authority has failed to give the identity and other particulars of the alleged associates of the petitioner; (d) in any view of the matter, the activities carried on by the petitioner can not affect the even tempo of life or public order, and the order of detention is, therefore, unwarranted; (e) the State Government has failed to forward the order of detention to the Advisory Board within the statutory period of three weeks, and the Advisory Board has failed to consider the same within the statutory period of 7 weeks.

I have perused the grounds of detention and the supporting materials. It transpires that five offences were registered against the petitioner in Vadodara city, three of which were not proved against the petitioner, and the other two were pending trial. In view of the petitioner's nefarious activities, under order dated 18th March, 1997, made by the Deputy Commissioner of Police, Vadodara, the petitioner was ordered to be externed from Vadodara city, Vadodara (Rural) and Kheda District for a period of 2 years. During the said period of externment, the petitioner has been staying at Bharuch. At Bharuch also, he is alleged to have been committing similar kind of offences, one of which is registered at Bharuch and is referred to in the grounds of detention. The witnesses also have narrated the incidents involving similar kind of offences, however, have not agreed to lodge a formal complaint against the petitioner on account of the apprehension of retaliation. The petitioner is said to have beaten the concerned witnesses for refusing to submit to his demand and also threatened the witnesses and the people by brandishing a knife. The statements of the witnesses have been recorded by a Police Inspector and have been verified by the Divisional Police Officer as well as the District Magistrate, the Detaining Authority. The subjective satisfaction of the Detaining Authority in this respect is also recorded in the order of detention in so many words.

The learned AGP Ms. Punani has submitted that the order of detention was sent to the Government for its approval on 16th September, 1998, and was approved by the State Government on 22nd September, 1998 i.e. well within the statutory period. The order of detention and the relevant papers were placed before the Advisory Board on 29th September, 1998, and the Advisory Board has considered the same and given its opinion on 25th October, 1998. It is, therefore, apparent that all the statutory formalities have been complied with within the stipulated period. She has further submitted that considering the case history of the petitioner, it can not be said that the petitioner is not a habitual offender. Besides, the registered offences, atleast on three occasions, the petitioner has committed similar offences. She has submitted that in this regards, the reliance can be placed on the unregistered offences as well. She has, therefore, relied upon the judgment of the Supreme Court in the matter of AMANULLA KHAN KUDEATALLA KHAN PATHAN VS STATE OF GUJARAT & ORS (Criminal Appeal No. 618/99 and Writ Petition (Criminal) No. 71/99, decided on 28th June, 1999). While

considering the similar contention, the Hon'ble Court has observed "Whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention is examined from the aforesaid stand point, it is crystal clear that apart from the criminal case which had been registered against the detenu.....the two witnesses examined by the detaining authority narrated the incident that happened on 26-7-98 and 2-8-98 in which the detenu was involved..." It is, thus, apparent that not only the registered offences, even the unregistered offences should be taken into consideration while considering whether the person concerned can be said to be a habitual offender or not. In the present case, as it is recorded hereinabove, three cases have been registered against the petitioner in Vadodara city and are pending trial, and apart from the case registered in Bharuch city, there are three more incidents which disclose the criminal tendency of the petitioner. It, therefore, can safely be said that the petitioner is a habitual offender and consequently a 'dangerous person' within the meaning of section 2 (c) of the Act. The nature of offences registered against the petitioner and the incidents narrated by each of the witnesses is sufficient to hold that the petitioner's activities do disturb the public tranquility and even tempo of life. It, therefore, can not be gainsaid that the petitioner's activities are prejudicial to the maintenance of public order. Be it noted that though the witnesses have made complaint against the petitioner as aforesaid, neither of them has named his associates. It would, therefore, be not possible to disclose the identity of the alleged associates of the petitioner. In my view, in such cases, mere non-disclosure of the identity of the associates of the petitioner would not vitiate the subjective satisfaction recorded by the Detaining Authority.

For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged.

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